LIBRARY,
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
JUL 28 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM 1958

No. 150

WILLIAM A. WEGMANN,
Petitioner,

vs.

NICHOLAS MANNINO, et al,
Respondents

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Wm. C. McLean
707 Florida Avenue
Tampa, Florida
Attorney for Respondents

Supreme Court of the United States

OCTOBER TERM 1958

NO. 150

WILLIAM A. WEGMANN,
Petitioner,

vs.

NICHOLAS MANNINO, et al,
Respondents

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JURISDICTION

Petitioner only cites 28 U. S. C. A. 1254 (1) to sustain jurisdiction. There is no statement to show the nature of the case and rulings of the Court were such as to bring the case within the jurisdictional provisions relied on, nor does Petitioner cite any cases to sustain jurisdiction.

Petitioner states that the rulings of the Court were contrary to the decisions of the Supreme Court of Florida, but Petitioner does not demonstrate that conclusion.

Petitioner fails to include a statement of the ground upon which it is contended that the questions involved are substantial.

Therefore, the Petition does not comply with the requirements of Rule 23 and by virtue of that rule such failure is "a sufficient reason for denying his petition."

QUESTIONS PRESENTED

Respondent is unable to find in the opinion of the Circuit Court any warrant for the questions here presented; but on the other hand, the Court very clearly enumerated the Petitioner's five contentions assigned as error (A 6).

In discussing the only assignment of error which would even remotely warrant the questions presented, the Circuit Court in its opinion said (A 9):

> "The weakness of this contention is indicated in that appellant refers us to no Florida case that supports the theory that such a contract can be broken into its legal and illegal parts. . . .
>
> "The statute expressly prohibits what the appellant here undertook to do and provides criminal sanctions for violating the prohibition. No part of such a contract can be the basis of a cause of action since the agreement here was indivisible in that it is impossible for the court to find that any part of the agreement would remain if the illegal part were to be stricken. So, too, as to the quantum meruit."

STATEMENT OF THE CASE

A succinct statement of the case will be found in the judgment appealed from (A 12) and the Circuit Court amplified this statement in its opinion (A 2) and cites the applicable Florida Statutes in a foot note (A 3, A 4).

REASONS FOR GRANTING THE WRIT

Petitioner has not demonstrated the existence of any reason for granting the writ. He shows no conflict of decisions. The case appears to be of no importance except to the litigants involved.

Petitioner contends that the District and Circuit Court failed to construe a contract in its entirety. It does not follow that this, if true, demonstrates that the Court of Appeals has decided an important state question in a way in conflict with applicable state law. There is no plain showing of error. The Circuit Court said:

> (1) "Appellant does not cite a single Florida case to aid us in determining whether his contract is a contract which requires him to perform the acts of a real estate broker. We must therefore look to the exact terms of the agreement and compare them with the language of the statute. (A 3)
>
> * * * * * * * *
>
> "The Court thereupon found, however, that 'the services required of plaintiff under the agreement are for those acts or services enumerated in subsection 2 of Section 475.01 Florida Statutes, which are rendered invalid by Section 475.41 Florida Statutes, unless the plaintiff shall have complied with * * * (Chapter 475, Florida Statutes)' in that he had not registered either as a real estate broker or salesman. (A 8).
>
> "We think it plain that this finding by the trial court is correct . . .

(2) "We think there is no magic in the term 'joint venture'. This may or may not be one, but whether it is or not is not decisive of anything. No case is cited to the effect that every joint venture as to the sale of real estate makes the joint venturers joint owners of the real estate. *Such a contention must not only be made but it must be supported if appellant is to have any comfort from it.*"

(Emphasis supplied)

(3) See quotation under Questions Presented.

CONCLUSION

The Court would have to relax its rules and precedents to grant Petitioner a third day in Court. Respondent submits the writ should be denied.

WM. C. MCLEAN
707 Florida Avenue
Tampa, Florida
Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed a copy of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari to Mr. Howard P. Rives, First Federal Building, Clearwater, Florida, as Attorney for Petitioner, by United States first class mail, postage prepaid, this —— day of July, 1958.

WM. C. MCLEAN